114-15

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1030.

ELLEN C. CLAWSON AND HIRAM B. CLAWSON,
APPELLANTS,

vs.

ALEXANDER RAMSEY, A. S. PADDOCK, G. L. GODFREY, A. B. CARLETON, J. R. PETTIGREW, E. D. HOGE AND JAMES T. LITTLE.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED OCTOBER 9, 1884.

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INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from district court	1	1
Complaint (amended)	1	1
Demurrer	8	6
Order sustaining demurrer	9	6
Judgment	9	6
Notice of appeal	10	7
Undertaking	10	7
Certificate of counsel	11	8
Order taking cause under advisement	12	8
Judgment	13	8
Order allowing appeal	14	8
Citation	15	9
Proof of service of citation	16	9
Assignment of errors	17	9
Bond	20	10
Clerk's certificate	24	11

JUDD & DETWEILER, PRINTERS, WASHINGTON.

a

Supreme Court, Utah Territory.

ELLEN C. CLAWSON *et al.*, Appellants,
vs.
ALEXANDER RAMSEY *et al.*, Respondents.

Transcript.

Bennett, Harkness & Kirkpatrick, att'ys for appellants.
Rosborough & Merritt, Arthur Brown, and Sheeks & Rawlins, counsel for appellants.
Dickson & Varian, and Hoge & Jonasson, att'ys for respondents.

Copy served Jan'y 9th, 1884.

DICKSON & VARIAN,
Att'ys for Resp'ts.

Filed January 9th, 1884.

E. T. SPRAGUE,
Clerk of Supreme Court.

1

Amended Complaint.

Supreme Court, Territory of Utah.

ELLEN C. CLAWSON and HIRAM B. CLAWSON, Plaintiffs,
vs.
ALEXANDER RAMSEY, A. S. PADDOCK, G. L. GODFREY, A. B. Carleton, J. R. Pettigrew, E. D. Hoge, and James T. Little, Defendants. } Transcript.

The plaintiffs above named complain of the defendants, and allege that the plaintiffs more than ten years ago intermarried, and ever since have been, and are, husband and wife, and the plaintiffs, on information and belief, allege that after the 22d day of March, 1882, and prior to the first day of July, 1882, under the provisions of section 9 of an act of the Congress of the United States, approved March 22d, 1882, and entitled "An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," the President of the United States, by and with the consent of the Senate of the United States, duly appointed the defend-

2 ants, Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, and J. R. Pettigrew, to perform the duties mentioned in said section, to be performed by a board of five persons, and by virtue of said appointment, they became a board of five persons with the powers named in said section.

And, on information and belief, the plaintiffs allege that, after such appointment, and prior to the first day of August, 1882, the last-named five defendants, duly qualified as such appointees, came to Utah and organized as a board, and entered upon the exercise of the powers and the discharge of the duties granted and imposed by said section 9 of said act of Congress. That after said organization, said five defendants were commonly called "commissioners," and are hereinafter referred to and called the "Board of Commissioners."

That said Board of Commissioners afterward ordered, directed and supervised a registration of the voters of the Territory of Utah, for the general election in said Territory, to be held on the seventh day of November, 1882, for the election of a delegate for said Territory to the Forty-eighth Congress, and for such other elections as might be held prior to another registration of voters of said Territory; and on or about the tenth day of August, 1882, the said Board of Commissioners made and published rules providing for said registration, for the appointment of registration officers and judges of election, and the canvas and return of the votes; directed said registration to be made during the week commencing on the second Monday of September, 1882, and, among other rules, wilfully and maliciously made and published the following:

"Rule I.

"There shall be appointed one registration officer for each county, and one deputy registration officer for each precinct thereof.

"Rule II.

"Such registration officer shall, on the second Monday of
3 September next, proceed by himself and his deputies in the manner following: The registration officer of each county shall procure from the clerk of the county court the last preceding registry list on file in his office, and shall, by himself or his deputies, require of each person whose name is on said list, or who applies to have his name placed on said list, to take and subscribed the following oath or affirmation:

"TERRITORY OF UTAH, } *ss:*
County of ——— }

"I, ——— ———, being first duly sworn (or affirmed), depose and say: That I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of ——— one month immediately preceding the date hereof, and (if a male) am a native born or naturalized (as the case may be) citizen of the United States, and a tax payer in this Territory, (or if a female) I am native born, or naturalized, or the wife, widow or daughter (as the case may be) of a native born or naturalized citizen of the United States, and I do further solemnly swear (or affirm), that I am not a bigamist nor a polygamist; that I am not a violator of the laws of the United States prohibiting bigamy or polygamy; that I do not live or cohabit with more than one woman in the marriage relation, nor does any relation exist between me and any woman which has been entered into or continued in violation of the said laws of the United States prohibiting bigamy or polygamy, (and if a woman) that I am not the wife of a polygamist, nor have I entered into any relation with any man in violation of the laws of the United States concerning polygamy or bigamy.

"Subscribed and sworn to before me, this ——— day of ——— 1882.

———,
"*Registration Officer,* ——— *Precinct.*

"And said registration officer, or his deputies, shall add to
4 said lists the names of all qualified voters in such precinct whose names are not on the list, upon their taking and subscribing to the aforesaid oath, and the said registration officer shall strike from said lists the names of said persons who fail or refuse to take said oath, or have died or removed from the precinct, or are disqualified as voters under the act of Congress approved March 22d, A. D. 1882, entitled 'An Act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes:' *Provided*, That the action of any registration officer may be revised and reversed by this commission, upon a proper showing: *And provided, further*, That if the registration officer be unable to procure the registration list from the office of the clerk of the county, or if the same have been lost or destroyed, the said officer and his deputies shall make a new registry list in full of all legal voters of each precinct of the county, under the provisions of these rules."

That said Board of Commissioners also, by rules, provided for the appointment of and appointed three judges of election for each election precinct in said Territory.

And on information and belief, the plaintiffs allege that the defendant, E. D. Hoge, was appointed registration officer for the county of Salt Lake, in said Territory of Utah, and the defendant, James T. Little, was appointed deputy registration officer for the fifth election precinct of the city of Salt Lake, in said county, and that each accepted the appointment, duly qualified, and respectively acted throughout the said registration as such registration and deputy registration officer.

And the plaintiffs allege, that on the second Monday of September, 1882, the defendant, James T. Little, as deputy registration officer for said fifth precinct in the city and county of Salt Lake, aforesaid, acting under the direction of the other defendants, commenced registering the voters of said precinct and making a registration list of such voters, and continued daily therein until the even-
5 ing of Saturday of the same week, when the registration was closed.

And the plaintiffs allege that the plaintiff, Ellen C. Clawson, is a native citizen of the United States of America, and prior to the 22d day of March, 1882, was more than twenty-one years of age; that she has resided continuously in the Territory of Utah for more than thirty-three years, and resided continuously in the fifth precinct of Salt Lake City, in said Territory, for more than two years last past; that she has, for more than ten years prior to the November election in 1882, lawfully exercised the rights and enjoyed the privileges of the election franchise in said Territory, and has, for more than five years last past, owned taxable property and been a tax payer in said Territory, and that her name was on the last registration list of the voters of said fifth precinct, made prior to the second Monday of September, 1882.

And the plaintiffs allege that the plaintiff, Ellen C. Clawson, is

not and never has been a bigamist or polygamist, and is not cohabiting and never has cohabited with any man except her husband, the co-plaintiff herein, to whom she was lawfully married more than fifteen years ago, and of whom she is the first and lawful wife.

That the plaintiff, Hiram B. Clawson, has not married or entered into any marriage contract or relation with any woman within the last six years, and has continuously and openly resided in the City of Salt Lake, in said Territory of Utah, for more than twenty years last past.

And the plaintiffs allege that on the 14th day of September, 1882, the plaintiff, Ellen C. Clawson, personally went before the defendant, James T. Little, then acting as deputy registration officer in and for the fifth precinct in Salt Lake City, aforesaid, and signed and presented to said defendant, and offered to verify, and requested the said defendant to take and certify her oath to the following affidavit, to wit:

6 TERRITORY OF UTAH, } *ss:*
County of Salt Lake, }

I, Ellen C. Clawson, being first duly sworn, do depose and say that I am over twenty-two years of age, and have resided continuously in the Territory of Utah more than six months, to wit, more than thirty-three years last past, and I have resided in the fifth precinct of Salt Lake City more than six months next preceding the date hereof, and still reside therein; I am a female native born citizen of the United States of America, and the first wife of a person claimed to be a polygamist, and cohabiting with him. My name is on the last registry list of voters of said precinct. I am not and never have been a bigamist or polygamist, and I am a property owner and tax payer in said Territory.

ELLEN C. CLAWSON.

Subscribed and sworn before me, this fourteenth day of September, A. D. 1882.

And at the same time the plaintiff, Ellen C. Clawson, requested said defendant, James T. Little, to put said plaintiff's name on the registry list of voters of said precinct, and to register her as a voter therein. That the said defendant, James T. Little, acting under the directions of the other defendants, wilfully and maliciously refused to receive said affidavit or to swear said plaintiff thereto, or to register her as a voter of said precinct, but on the contrary wilfully and maliciously struck said plaintiff's name off the list of registered voters of said precinct, and left her name off the list of voters of said precinct, made at said registration.

That afterward before the close of said registration, and on the 15th day of September, 1882, the plaintiff, Ellen C. Clawson, presented a duplicate of said last-named affidavit to the defendant, E. D. Hoge, then acting as county registration officer for said county of Salt Lake, and informed him of the ruling and action as aforesaid of the defendant, James T. Little, and requested the defendant, E. D.

Hoge, to correct and reverse said ruling, and to instruct the defendant, James T. Little, to swear her to said affidavit and register
7 her as a voter, and the said defendant, E. D. Hoge, wilfully and maliciously refused to correct or change said ruling and action, and approved and affirmed the same.

That on the 16th day of September, 1882, the plaintiff, Ellen C. Clawson, presented to said Board of Commissioners a duplicate of said last-named affidavit, and informed them of the action and ruling of the defendants, James T. Little and E. D. Hoge, and requested said board to reverse and correct said rulings and action, and to direct that said plaintiff's oath to said affidavit be taken, and that she be registered as a voter of said precinct, and the said Board of Commissioners wilfully and maliciously refused to correct or change said rulings, and affirmed and approved the same, and said last-named ruling was made before the close of the registration in said precinct, and when there was still time for said plaintiff to have registered before the close of the registration.

And, on information and belief, the plaintiffs allege that the defendants all knew that, unless the name of the plaintiff, Ellen C. Clawson, appeared on the registration list then being made of the voters of said precinct, her vote would not be received at the election to be held November 7, 1882, or at any election until after another registration of voters.

That at an election held throughout the Territory of Utah, on the 7th of November, 1882, for the election of a delegate for the Territory of Utah for the Forty-eighth Congress, the plaintiff, Ellen C. Clawson, went before the judges of election in said fifth precinct of the city of Salt Lake, in the county of Salt Lake, at the place where the votes in said precinct were being taken, and offered to vote at said election, and tendered and offered to take the same affidavit, but the said judges refused to receive her vote, on the ground that she was not registered as a voter in said precinct.

And, on information and belief, the plaintiffs allege that the defendants, and each of them, intending to wrongfully deprive the plaintiff, Ellen C. Clawson, of the elective franchise in said
8 Territory, wilfully and maliciously, by the acts and in the manner aforesaid, refused the said plaintiff registration as a voter, at the said registration commenced on the second Monday of September, 1882, and deprived her of the right to vote at the election held in said Territory on the 7th day of November, 1882, and at all elections under said registration, whereby plaintiffs have sustained damage to the amount of twelve hundred dollars.

Wherefore the plaintiffs pray judgment against the defendants for the sum of twelve hundred dollars and costs of suit.

BENNETT, HARKNESS & KIRKPATRICK,
Attorneys for Plaintiffs.
ROSBOROUGH & MERRITT,
ARTHUR BROWN,
SHEEKS & RAWLINS,
Of Counsel for Plaintiffs.

(Duly verified.)
Filed Aug. 16, 1883.

Demurrer.

(Title.)

The defendants in the above-entitled action, each in his own behalf, demur to the amended complaint therein, on the following grounds, which appear on the face thereof, to wit:

1. Said complaint does not state facts sufficient to constitute a cause of action.

E. T. SPRAGUE,
Defendants' Att'y.

(Duly verified and filed.)

9 *Order on Demurrer.*

(Title.)

The arguments on the demurrer of the defendants having been heard, it is now ordered and adjudged that the said demurrer be, and the same is hereby, sustained, and that the defendants have judgment against the plaintiffs unless they amend their complaint and pay the costs of the demurrer.

And the plaintiffs, by counsel, in open court, having declined to amend, and elected to abide by their complaint, judgment in favor of the defendants, and against the plaintiffs, is ordered.

Dated Dec. 10th, 1883.

By the court:

JOHN A. HUNTER, *Judge.*

And at the same time the plaintiffs, by counsel, duly excepted to the ruling and decision of the court on said demurrer, and the exception is allowed.

JOHN A. HUNTER, *Judge.*

(Filed Dec. 10, 1883.)

Judgment.

(Title.)

In this action the defendants having demurred to the plaintiffs' complaint herein, and said demurrer having been argued and submitted to the court at the September term, 1883, thereof, and the court having now fully considered the same, and sustained the demurrer, and plaintiffs, by their attorneys, Messrs. Bennett, Harkness & Kirkpatrick, elect to stand by their said complaint and decline to amend the same:

10 Thereupon, on motion of Dickson & Varian, of counsel for defendants, it is ordered, adjudged and decreed by the court that plaintiffs take nothing by their said suit, and that the complaint therein be dismissed.

And it is further adjudged and decreed that said defendants recover of and from said plaintiffs their costs on this behalf expended and taxed at $10.00.

Filed Dec. 10, 1883.

Notice of Appeal.

(Title.)

To the above-named defendants:

Please take notice that the plaintiffs in this action appeal to the supreme court of Utah Territory from the judgment rendered in this action on the 10th day of December, 1883, in favor of the defendants and against the plaintiffs, and from the whole of said judgment.

Dated December 14th, 1883.

BENNETT, HARKNESS & KIRKPATRICK,
Attorneys for Plaintiffs.

(Endorsed:) Service of a copy admitted, Dec. 14th, 1883.

DICKSON & VARIAN,
Defendants' Att'ys.

Filed Dec. 14th, 1883.

Undertaking.

(Title.)

The above-named plaintiffs having appealed to the supreme court of Utah Territory from the judgment herein against them and in favor of the defendants on the 10th day of December, 1883:
11 now, therefore, the undersigned, as sureties, do jointly and severally undertake and promise that the appellants will pay all costs and damages which may be awarded against them on the appeal.

Dated December 15th, 1883.

A. MILTON MUSSER. [SEAL.]
LEGRANDE YOUNG. [SEAL.]

TERRITORY OF UTAH, }
Salt Lake County, } ss:

A. Milton Musser and LeGrande Young, being each duly sworn, doth each for himself depose and say: I am a resident of Salt Lake City, Utah; am one of the sureties named in the above undertaking, and I am worth the sum of four hundred dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

A. MILTON MUSSER.
LEGRANDE YOUNG.

Subscribed and sworn to before me, December 15th, 1883.

[SEAL.] E. T. SPRAGUE,
Clerk of Supreme Court.

Filed Dec. 15th, 1883.

We certify the foregoing is a full, true, and correct transcript of the record in this action.

Dated Jan'y 9th, 1884.

BENNETT, HARKNESS & KIRKPATRICK,
Att'ys for Appellants.
DICKSON & VARIAN,
Att'ys for Resp'ts.

12 FRIDAY, *February 1st*, A. D. 1884.

A session of the supreme court of Utah Territory was held this day, beginning at ten o'clock a. m., pursuant to adjournment. Present and presiding, Hon. John A. Hunter, chief justice; present, also, Hon. P. H. Emerson, associate justice, and Hon. S. P. Twiss, associate justice; the clerk, marshal, and members of the bar.

* * * * * * * *

ELLEN C. CLAWSON *et al.*, Appellants,
vs.
ALEX. RAMSEY *et al.*, Respondents. } From 3d Dist.

This cause coming on regularly for hearing, was, by counsel of the respective parties, submitted, and by the court taken under advisement.

13 WEDNESDAY, *June 25th*, A. D. 1884.

A session of the supreme court of Utah Territory was held this day, beginning at ten o'clock a. m., pursuant to adjournment. Present and presiding, the Hon. John A. Hunter, chief justice; present, also, the Hon. Philip H. Emerson, associate justice, and the Hon. Stephen P. Twiss, associate justice; the clerk, marshal, and members of the bar. Court was duly opened.

* * * * * * * *

ELLEN C. CLAWSON and HIRAM B. CLAWSON, Appellants,
vs.
ALEXANDER RAMSEY, A. S. PADDOCK, G. L. GODFREY, A. B. Carlton, J. R. Pettigrew, E. D. Hoge, and James T. Little, Respondents. } From 3d Dist.

This cause having been heretofore submitted, and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the judgment of the district court therein be, and the same is hereby, affirmed, and that respondents have and
14 recover of and from appellants twenty-eight and $\frac{31}{100}$ dollars and costs.

Thereupon said appellants, by their counsel, prayed the allowance of an appeal from this judgment to the Supreme Court of the United States, and ask that the amount of a bond to be given thereon be now fixed; and it is hereby accordingly ordered, counsel of respondents being present and not objecting, that such appeal be and is allowed, and the penal sum of bond to be given thereon be and is fixed at $250.00.

15 The United States of America to Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, J. R. Pettigrew, E. D. Hoge, and James T. Little, Greeting:

You are cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, District of Columbia, on the 2d Monday of October next, pursuant to an appeal allowed by the supreme court of the Territory of Utah on the 25th day of June, 1884, and duly entered on the records of said court, wherein Ellen C. Clawson and Hiram B. Clawson are appellants and you are the appellees, to show cause, if any there be, why the judgment rendered in said action by the supreme court of the Territory of Utah, on the 25th day of June, 1884, against the said appellants, should not be reversed and the errors therein corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. John A. Hunter, chief justice of the supreme court of Utah Territory, this 28th day of June, A. D. 1884.

JOHN A. HUNTER,
Chief Justice.

16 A copy of the within citation was personally served on us, and the original exhibited, this 30th day of June, 1884, and due service is admitted.

DICKSON & VARIAN,
Att'ys for Appellees.

[Endorsed:] Ellen C. Clawson & Hiram B. Clawson *vs.* Alexander Ramsey *et al.*, appellees. Citation and admission of service. Filed June 30, 1884. E. T. Sprague, clerk.

17 *Assignments of Error.*

ELLEN C. CLAWSON and HIRAM B. CLAWSON, Appellants,
vs.
ALEXANDER RAMSEY, A. S. PADDOCK, G. L. GODFREY, A. B. CARLTON, J. R. Pettigrew, E. D. Hoge, and James T. Little, Appellees.

The appellants having appealed to the Supreme Court of the United States, assign errors on the record herein as follows:

1. The court erred in affirming the judgment of the district court rendered on demurrer to the amended complaint, and thereby holding the amended complaint did not state a cause of action, and in not holding the amended complaint did state a cause of action, and reversing the judgment of the district court.

2. The ruling on the demurrer and the judgment of the district court thereon, and the judgment of the supreme court of Utah, necessarily affirm the amended complaint does not state a cause of action; whereas the said amended complaint does state all the facts necessary to a complete cause of action.

It shows that at the time of the registration of voters in
18 September, 1882, the plaintiff, Ellen C. Clawson, was a qualified voter, and had the right to register as such, and to vote at the November election in the same year; that her name was on the prior registration list, and should, by law, have remained there, unless removed after challenge and a hearing, as provided by law.

That she offered the proofs required by law (if any proofs were required) to have her name put on, or remain on, the registration list of her precinct.

That she was a legal voter, and had the right to vote at the November election in 1882.

That she was deprived of her lawful right to register, and also to vote, by the illegal acts of the defendants, as follows:

In erasing her name from the registration list at a time when they had no jurisdiction or lawful right to do so.

In refusing to leave her name on the registration list, or to put her name on said list, when she offered all the proofs and did all
19 the acts required by law for that purpose.

In usurping legislative powers by prescribing a registration oath unauthorized by law, and refusing to register the plaintiff, Ellen C. Clawson, unless she would subscribe and take said oath.

In requiring said plaintiff, as a requisite to registration, to subscribe and take an unauthorized oath, which gave an *ex post facto* interpretation to a penal act, and which in its terms consisted largely of legal conclusions, and was so ambiguous as to be unintelligible.

The judgment herein having been rendered without any opinion, a more specific assignment of errors cannot be made.

F. S. RICHARDS &
C. W. BENNETT,
Counsel for Appellants.

Filed June 30, 1884.
E. T. SPRAGUE, *Clerk.*

20 Know all men by these presents, that we, John R. Winder and Henry Dinwoody, both of Salt Lake City, in the county of Salt Lake and Territory of Utah are held and firmly bound, jointly and severally, unto Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carlton, J. R. Pettigrew, E. D. Hoge, and James T. Little, in the full and just sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carlton, J. R. Pettigrew, E. D. Hoge, and James T. Little their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately, at a term of the supreme court of the Territory of Utah, held at the city of Salt Lake, in the county of Salt
21 Lake and Territory of Utah, in a suit depending in said court

on appeal from the district court of the third judicial district of said Territory, between Ellen C. Clawson and Hiram B. Clawson as plaintiffs and appellants, and the said Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carlton, J. R. Pettigrew, E. D. Hoge, and James T. Little as defendants and respondents, judgment was rendered against the said Ellen C. Clawson and Hiram B. Clawson, and in favor of said respondents, in said court, at said term, and on the twenty-fifth day of June, 1884, in substance affirming the judgment of said district court, with costs, and the said Ellen C. Clawson and Hiram B. Clawson having on the same day, in said supreme court of said Territory, prayed the allowance of an appeal to the Supreme Court of the United States, and the said appeal having been allowed, and said court having fixed the amount of the
22 bond to be given for damages and costs at the sum of two hundred and fifty dollars:

Now, the condition of the above obligation is such, that if the said Ellen C. Clawson and Hiram B. Clawson shall prosecute their appeal to effect, and answer all damages and costs if they shall fail to make their plea and appeal good, then the above obligation to be void; else to remain in full force and effect.

JOHN R. WINDER. [SEAL.]
HENRY DINWOODY. [SEAL.]

Sealed and delivered in the presence of—
WILLIAM W. TAYLOR.
ANGUS M. CANNON.

Approved by me, this 28th day of June, A. D. 1884.
JOHN A. HUNTER,
Chief Justice Supreme Court Utah Territory.

23 [Endorsed:] Ellen C. Clawson and Hiram B. Clawson *vs.* Alexander Ramsey *et al.* Supersedeas bond. Filed June 30th, 1884. E. T. Sprague, clerk.

No opinion has been given.

E. T. SPRAGUE, *Clerk.*

24 TERRITORY OF UTAH, } *ss:*
County of Salt Lake, }

I, E. T. Sprague, clerk of the supreme court of said Territory of Utah, in pursuance of a certain appeal allowed by said court, do return hereto attached a transcript of the record and proceedings, assignment of errors, and of the bond on appeal, with a citation and proof of service thereof, all in and of said court in a certain cause in said citation described, to the Supreme Court of the United States, and I hereby certify that said transcript of the record and proceedings, assignment of errors, and said bond, so attached, is a true, full, correct, and complete copy of the several originals thereof on file or of record in my office.